IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.12.2007

CORAM:

THE HONOURABLE MR.JUSTICE K.MOHAN RAM

CRL.O.P.No.31855 of 2007

G.Susan Rebecca ... Petitioner

Vs.

1. State rep.by
The Commissioner of Police
Greater Chennai
Egmore, Chennai

2. The Inspector of Police (Crime)
T6 Avadi Police Station
Chennai 600 054.

3. The Superintendent of Police
Central Bureau of Investigation
Chennai ... Respondents

Prayer : Criminal Original Petition filed under Section 482 of the Criminal Procedure Code to transfer the petitioner's complaint dated 28.08.2007 from the file of the second respondent to the file of the third respondent herein, in the interests of justice, directing the third respondent to register a First Information Report on the basis of the said complaint dated 28.08.2007, investigate the matter and file a final report within the time frame as stipulated by this Court.

For Petitioner : Dr.G.Krishnamurthy for
Mr.A.Thirumaran

For Respondents : Mr.Hasan Mohamed Jinnah
Government Advocate (Crl.Side)
for RR1 & 2
Mr.N.Chandrasekaran
Special Public Prosecutor for CBI Cases
for R3

O R D E R

The above petition has been filed to transfer the petitioner's complaint dated 28.08.2007 from the file of the second respondent to the file of the third respondent herein, in the

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interests of justice, directing the third respondent to register a First Information Report on the basis of the said complaint dated 28.08.2007, investigate the matter and file a final report within the time frame as stipulated by this Court.

2. It is the case of the petitioner that she is the owner of the property at No.18, Kamaraj Nagar, Palaripet Village, Avadi, Chennai-71 measuring about 1960 sq.ft. The petitioner came to know that one Mr.Rajasekaran had purchased the property from the accused for a consideration of Rs.9,20,000/- and the said Rajasekar prevented the petitioner from entering the property and threatened to kill her, if she enters the property. On further enquiries, the petitioner came to know that the accused had created forged and fabricated documents to the effect that that the petitioner had sold the property to the accused and thereafter the said accused in collusion and connivance with said Rajasekar, the Sub Registrar of Avadi and other officials of Avadi Sub Registrar's office had created false documents and transferred the property in the name of Mr.Rajasekar. In respect of the above said criminal acts, the petitioner preferred a complaint to the first respondent on 28.08.2007, which was forwarded to the Deputy Commissioner of Police of Avadi who in turn forwarded to the Assistant Commissioner of Police, Avadi Range. The Assistant Commissioner of Police Avadi Range thereafter forwarded to the second respondent.

3. According to the petitioner, the second respondent totally disregarded the complaint of the defacto complainant as forwarded by the first respondent but he dictated a fresh complaint to the petitioner wherein the original averments contained in the complaint dated 28.8.2007 were omitted and when the petitioner protested, the second respondent threatened, coerced and forced the petitioner to write a fresh complaint and sign the same under duress and coercion. It is the further case of the petitioner that the second respondent had registered the case on the second complaint which, according to the petitioner, was forcibly obtained from her.

4. According to the petitioner, the second respondent has now registered a case in Crime No.1642 of 2007 for the alleged offences under Sections 419, 420, 468, 469, 470 and 471 of IPC. In such circumstances, the petitioner has filed the above petition seeking transfer of the investigation from the file of the second respondent to the file of the Superintendent of Police, Central Bureau of Investigation, the third respondent herein.

5. Denying the allegations contained in the above petition, the second respondent has filed a counter statement. In the counter statement in para 14, it is stated as follows:

> "14. It is submitted that the allegations of the petitioner in paragraph Nos.9 and 10 of her petition is totally false and incorrect. I have not forced and threatened her to give a fresh complaint, since the

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original complaint was forwarded to the Commissioner of Police, Chennai. We have also recorded the 161 Cr.P.C.statement of the complainant and the contents which was in the original complaint was also recorded in the same statement on the same day, i.e. 18.09.2006."

It is further stated in the counter affidavit that proper investigation is being done by the second respondent and there is absolutely no necessity to transfer the investigation from the file of the second respondent to the file of the third respondent.

6. Heard Dr.G.Krishnamurthy, learned counsel appearing for the petitioner and Mr.Hasan Mohammed Jinnah, learned Government Advocate (Crl.side) appearing on behalf of respondents 1 and 2 and Mr.N.Chandrasekaran,, learned Special Public Prosecutor for CBI Cases for R3.

7. Learned counsel for the petitioner submitted that if, as stated in the counter affidavit by the second respondent, the fresh complaint was given by the petitioner on her own without being coerced by the second respondent, the second complaint should contain the same averments as are found in the original complaint submitted to the first respondent. But the second complaint does not contain the serious allegations made against the petitioner's husband and the other accused. Learned counsel further submitted that in the original complaint it is specifically stated that the property in question was purchased with her own funds, whereas in the complaint, which was obtained by the second respondent, the said averments are missing. But, instead, it is stated that the property in question was purchased with the funds provided by her husband. According to the learned counsel, such averments has been incorporated in the second complaint only to help the accused.

8. Learned Government Advocate (Crl.side) would submit that whenever a complaint is given to the first respondent and if such a complaint is forwarded to the concerned jurisdictional police station, it is the normal practice to call the defacto complainant and to get a fresh complaint to proceed further and after preliminary investigation the original complaint, which has been received from the Commissioner of Police will be returned back to him, together with a report regarding the action taken on the complaint. Only because such a procedure has been followed,in this case, a second complaint was obtained from the petitioner.

9. According to the learned Government Advocate (Crl.Side), an enquiry conducted by the Assistant Commissioner of Police reveals that no coercion was exercised by the second respondent to get a different complaint from the petitioner as alleged by the petitioner. Learned Government Advocate (Crl.side) also fairly submits that the procedure adopted by the second respondent is not strictly in accordance with the provisions contained in the Code of Criminal Procedure but, however, he submits, that it is the a normal practice that is being followed by all the police stations.

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10. I have carefully considered the said submissions made by the learned counsel on either side.

11. At the outset it is to be pointed out that the procedure adopted by the second respondent in getting a second complaint from the petitioner is against the provisions contained in the Code of Criminal Procedure. When a written complaint is submitted by the defacto complainant to higher police officials and when the same is forwarded to the jurisdictional police station for taking appropriate action on such complaint, it is un-understandable as to why a second complaint has to be obtained from the defacto complainant. When such a complaint is forwarded by a higher police official, if the concerned Officer, who is entrusted with the registration of the case on the compliant, on a perusal of the complaint finds that commission of cognizable offence is made out from the allegations contained in the complaint, it is mandatory on its part as contemplated under Section 154 of Cr.P.C.to register a case and proceed with the investigation as contemplated in the Code of Criminal Procedure. In the course of such investigation, the Investigating Officer is entitled to examine the defacto complainant and other witnesses and record their statements. But, no where in the Code of Criminal Procedure it is provided for getting a second complaint from the defacto complaint.

12. It may be true that, as submitted by the learned Government Advocate (Crl.side), whenever a complaint is forwarded by the higher police official to the jurisdictional police station, a second complaint is obtained from the defacto complainant, but such second complaint should be in consonance with the first complaint given by the defacto complainant to the higher police official and it cannot be in variance with the first complaint. In this case, the specific allegation of the petitioner is that the second complaint was obtained from the petitioner by the second respondent by exercising coercion and according to the learned counsel for the petitioner but for the coercion exercised by the second respondent, the petitioner would not have given the second complaint in question.

13. It is pertinent to point out that though a detailed counter statement has been filed by the second respondent, nowhere in the counter, it is stated that the second complaint contains the same averment as found in the first complaint given by the petitioner to the 1st respondent. It is also not explained as to why the second complaint contains the averments which are in variance with the averments contained in the first complaint. Therefore, this Court is of the considered view that there is force in the contention of the learned counsel for the petitioner. In the light of the specific allegation made by the petitioner, the apprehension entertained by the petitioner that she will not get real justice if the investigation is carried on by the second

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respondent cannot be said to be baseless. Further, when serious allegation has been made against the second respondent, it is not proper for the second respondent to continue with the investigation in the case.

14. Therefore, in the interest of justice, this Court is of the considered view that the complaint should be transferred from the file of the second respondent . But however, this Court is of the view that complaint need not be transferred to the file of the third respondent. But interest of justice will be served, if the investigation is transferred to the file of the CBCID. Accordingly, the following order is passed:

> "The entire files relating to Crime No.1642 of 2007 pending on the file of the second respondent shall be transferred by the second respondent to the Superintendent of Police, CBCID, Government Estate, Mount Road, Chennai within one week from the date of receipt of a copy of this order. The Superintendent of Police, CBCID on receipt of the files from the second respondent shall entrust the matter for fresh investigation to a competent officer in the rank of Deputy Superintendent of Police within two weeks therefrom and such investigation shall be completed within a period of six months, thereafter and final report shall be filed."

15. With the above direction, this Criminal Original Petition is disposed of.

vj2

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The Commissioner of Police
   Greater Chennai
   Egmore, Chennai

2. The Inspector of Police (Crime)
   T6 Avadi Police Station
   Chennai 600 054.

3. The Superintendent of Police
   Central Bureau of Investigation
   Chennai

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4. The Superintendent of Police,
   CBCID, Government Estate,
   Mount Road, Chennai.

5. The Public Prosecutor,
   High Court, Madras.

+ 1 cc to Mr. J. B. Solomon peter kamaldoss, Advocate SR No. 71452/07

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